



**SCOTTSDALE PLANNING COMMISSION
KIVA-CITY HALL
3939 N. DRINKWATER BOULEVARD**

JUNE 11, 2008

Approved 06-25-2008

PRESENT:

Steve Steinberg, Chairman
James Heitel, Vice Chairman
Steven Steinke, Commissioner
Kevin O'Neill, Commissioner
David Barnett, Commissioner
Eric Hess, Commissioner
Jeffrey Schwartz, Commissioner

STAFF:

Hank Epstein
Lusia Galav
Don Hadder
Jesus Murillo
Keith Niederer
Sherry Scott
Louisa Garbo
Greg Williams

CALL TO ORDER

Chairman Steinberg called the meeting of the Scottsdale Planning Commission to order at 5:04 p.m.

ROLL CALL

A formal roll call was conducted confirming members present as stated above.

MINUTES REVIEW AND APPROVAL

1. April 23, 2008 Regular Meeting Minutes and Agenda

**COMMISSIONER BARNETT MOVED TO APPROVE THE APRIL 23, 2008
MINUTES OF THE PLANNING COMMISSION. SECONDED BY**

COMMISSIONER STEINKE, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).

ADMINISTRATIVE REPORT

Ms. Galav announced that Frank Gray had submitted his resignation. Connie Padian will be the Interim Acting General Manager for the Planning department.

Ms. Galav mentioned that the next step in the General Plan update would be the formation of an advisory committee for the Southern and Airpark character area plans, which will be chaired by a Planning Commission member. Commissioners will select a chairperson for that committee at the next meeting.

New Commissioner appointments are expected at the June 24th City Council hearing. Replacements for the exiting chair and vice chair will be voted on during the July Planning Commission hearing.

CONTINUANCE

2. 37-ZN-1980#2 Highland Park Phase 2

Request by owner to amend the site plan and stipulations of the rezoning case #37-ZN-1980 on a +/- 4.8 acre site located at 4725 N. Scottsdale Road with Central Business District (C-2) zoning.

3. 27-UP-2007 Highland Park Phase 2

Request by owner for a Conditional Use Permit for a health studio on a +/- 4.8 acre site located at 4725 N. Scottsdale Road with Central Business District (C-2) zoning.

COMMISSIONER BARNETT MOVED TO CONTINUE 37-ZN-1980#2 TO A DATE TO BE DETERMINED AND 27-UP-2007 TO A DATE TO BE DETERMINED. SECONDED BY COMMISSIONER SCHWARTZ, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).

EXPEDITED AGENDA

5. 5-ZN-2008 Indian River Plaza
Request by applicant to rezone from Neighborhood Commercial District (C-1) to Central Business District (C-2) on an 8.232-acre parcel located at 2820 N. Hayden Road.

6. 17-UP-2007 Pranksters Too

Request by applicant for a Conditional Use Permit for a bar on an 8.3232-acre parcel located at 7919 E. Thomas Road; #101; with proposed Central Business District (C-2) zoning.

7. 18-UP-2007 Pranksters Too

Approved 06-25-2008-cb

Request by applicant for a Conditional Use Permit for Live Entertainment on an 8.232-acre parcel located at 7919 E. Thomas Road #101; with proposed Central Business District (C-2) zoning.

8. 16-UP-2007 Cambria Suites and Pima Condominium Suites

Request by applicant to amend an existing Conditional Use Permit for a Hotel on a 5.938+/- acre parcel at 7330 N. Pima Road with Multifamily Residential/Planned Community District (R-5/PCD) zoning.

9. 21-UP-2007 Drift

Request by applicant for a Conditional Use Permit for a bar on a 9,609.32+/- square-foot site located at 4341 N. 75th Street with Highway Commercial District, Parking District, Downtown Overlay (C-3/P-3 DO) zoning.

COMMISSIONER BARNETT MOVED TO APPROVE 5-ZN-2008 INDIAN RIVER PLAZA; 17-UP-2007 PRANKSTERS TOO, ASSUMING IT MEETS THE CONDITIONAL USE PERMIT CRITERIA; 18-UP-2007 PRANKSTERS TOO, ASSUMING IT MEETS THE CONDITIONAL USE PERMIT CRITERIA; 16-UP-2007 CAMBRIA SUITES AND PIMA CONDOMINIUM SUITES, ASSUMING IT MEETS THE CONDITIONAL USE PERMIT CRITERIA; AND 21-UP-2007 DRIFT, ASSUMING IT MEETS THE CONDITIONAL USE PERMIT CRITERIA. SECONDED BY COMMISSIONER SCHWARTZ, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).

4. 2-ZN-2008 Dynamite Hills

Request by applicant for approval of a density incentive bonus for Single-Family Residential, Environmentally Sensitive Lands (R1-190 ESL) zoning to increase units from six to seven dwelling units on 28+/- acres of land located at 1170 E. Via Dona Road.

Mr. Howard Myers spoke about the importance of regulating open space in the NAOS areas. He reiterated his previous suggestion that a text amendment be developed defining meaningful open space and the requirements for obtaining density incentives. It is important to encourage off-lot open space because of the difficulties in regulating on-lot NAOS.

Vice-Chairman Heitel underscored Mr. Myers' comments, noting his previous requests for development of regulations. With the limited number of critical R1-90 areas left, it is important to have a discussion about meaningful open space and the benefit to the City for granting extra lots. He stressed the importance of bringing a discussion forward before the City is placed in a position where they are required to give 25-percent bonuses to major projects for no return. He acknowledged the efforts of this Applicant to supply open space and small building envelopes.

Commissioner Hess agreed with comments of Vice-Chairman Heitel, noting the ease with which a solution could be agreed upon.

Approved 06-25-2008-cb

In response to a question by Commissioner O'Neill, Ms. Galav confirmed that Vice-Chairman Heitel's previous requests had been considered and was on Advanced Planning's schedule of text amendments. She agreed to reiterate the Planning Commission's desire to expedite this amendment and felt it could be ready for initiation by September.

Commissioner Schwartz sympathized with Vice-Chairman Heitel's frustrations. He suggested that a process be developed to track Commissioner requests on an ongoing basis and provide written updates to the Commission at each meeting. Updates would assure Commissioners that their request was in queue and act as an ongoing reminder to staff.

COMMISSIONER BARNETT MOVED TO APPROVE 2-ZN-2008, DYNAMITE HILLS. SECONDED BY COMMISSIONER SCHWARTZ, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).

REGULAR AGENDA

10. 18-ZN-2006 Ranches at Stagecoach Pass

Request by owner to approve a request for a density incentive bonus and amended development standards with Single-Family Residential, Environmentally Sensitive Lands (R1-190 ESL) zoning to increase lots from four to five lots on a 20+/- acre parcel located at 36180 N. Windmill Road.

Mr. Murillo reviewed the history of the case including previously proposed plats. The Applicant was asking to amend development standards for lot widths and reduced lot square footage. The majority of NAOS will be located within the washes.

Vice-Chairman Heitel inquired what steps had been taken to ensure the Applicant's promise of equestrian uses will be followed through with over time. Mr. Murillo explained that placing NAOS in the wash areas would force future homeowners to apply for release. A portion of the NAOS would be located along Stagecoach Pass Road, which would provide the desired buffer. The Applicant is aware that the City will be strict in maintaining front and rear yard development standards.

Mr. Dave Wood reviewed the steps taken in response to previous Commission comments. With the request for natural area density incentive, one more lot is being requested with the intention of approximately 40 percent of the lot being natural area open space. The layout is intended to minimize the amount of street penetration, retaining as much rural and native area as possible. In addition to the dedicated open space, the area depicted in white on the site plan will be non-dedicated NAOS.

Vice-Chairman Heitel reiterated his concerns about density bonuses. He expressed his specific concerns about the lack of meaningful open space within the project, particularly with the area north of the 50 CFS (cubic feet per second) wash and the area in the southeast corner. He questioned why the Applicant did

not choose to use a continuous open space concept. Mr. Wood argued that the hope was that the buyer of the property would not utilize the entire buildable area. Vice-Chairman Heitel opined that the greatest concern with on-lot NAOS was the lack of controls.

In response to a suggestion by Vice-Chairman Heitel that a stipulation be made requiring the Applicant to work with Staff to carve out the two areas as off-lot NAOS, Mr. Roger Tornow recalled previous discussions regarding the development envelopes and the significant time spent identifying the appropriate areas for development. The Applicant is attempting to maintain the unique features of the property as much as possible with the current plan.

Mr. Howard Myers felt that the plan was preferable compared to past submissions. He expressed concerns regarding crossing the wash areas. He felt that a stipulation should be included requiring the area to be bridged leaving the area untouched. In addition, he suggested including a stipulation restricting future NAOS releases.

Mr. Tornow clarified that the intention was to mitigate the wash situation; there will be no wet crossings on the property.

Mr. Hadder explained that the NAOS requirement becomes the standard established with the approval; it is mandated they cannot release below. He explained that a 100-year fire truck culvert access would be required on the south end off Windmill Roadway. Drainage standards are included in the Flood Plain Ordinance and the Design Standards and Procedures Manual.

Chairman Steinberg commented that the project had come a long way from the first iteration.

Vice-Chairman Heitel opined that there were substantive issues that had not been addressed by the City in regards to density bonuses. He was not able to support the project, given the small percentage of increase in NAOS because of the precedent that it may set for future R1-90 cases.

COMMISSIONER SCHWARTZ MOVED TO APPROVE CASE 18-ZN-2006 WITH THE STIPULATION REQUIRING THAT IF A CROSSING IS REQUIRED ON LOT FOUR TO THE BUBBLE, THAT IT SPAN THE WIDTH OF THE WASH SO THAT IT DOES NOT DISTURB THE SIDES AS THEY EXIST TODAY. SECONDED BY COMMISSIONER STEINKE, THE MOTION CARRIED WITH A VOTE OF FIVE (5) TO TWO (2). VICE-CHAIRMAN HEITEL AND COMMISSIONER HESS DISSENTED.

11. 3-UP-2008 APS Cricket Hayden

Request by applicant for a Conditional Use Permit for a wireless communication facility on an existing APS 345 kV power line lattice tower located at the northeast corner of E. Jomax Road and N. Hayden Road with Single-Family, Environmentally Sensitive Lands, Foothills Overlay (R1-190/ESL FO) zoning.

Mr. Niederer reviewed the application, which was returning for reconsideration at the request of the City Council. Staff recommended a continuance to allow time to work out details of the lease of the water tank site and time to consider alternative available WCF locations. Alternate location possibilities would proceed through the Development Review process and the use permit application would be withdrawn.

In response to a question by Commissioner Steinke, Mr. Niederer confirmed that nothing had been changed in the application since the City Council review.

In response to a question by Commissioner Hess, Mr. Niederer explained that in addition to the existing base equipment, the FCC is now requiring emergency backup.

Commissioner Schwartz inquired whether any amendments are available to allow the process to continue without starting over if the application were denied. Mr. Niederer reiterated that alternate choices outside of the water tower would go through the DRB process. City Council recommendation was to explore additional sites; the concern was in the fact that the site is within the planned recommended study Preserve boundary. Ms. Scott reiterated that the site was not within the Preserve boundary, it is within the study area.

Mr. Rulon Anderson reviewed the history of the application. He felt that expanding the use of the existing element would minimize visual impact while providing service. He reiterated that the land was not yet part of the Preserve and was planned to be put up for auction. He noted that T-Mobile felt as though they were being discriminated against because the application was submitted post 2003. Adjudication to Federal Court required a denial by the City; a final determination from the jurisdiction involved is required to move forward. He requested that the Planning Commission provide a yes or no ruling without consideration of a continuance.

Ms. Scott confirmed that alternative options had been explored and that it would be appropriate for the Commission to provide a yes or no ruling.

In response to a question by Commissioner O'Neill, Mr. Niederer explained that the most important consideration for the current location request was the creation of dust from the service vehicles. Commissioner O'Neill opined that was an absurd response because of the minimal amount of servicing required and the extensive steps the City is requiring from the Applicant. Mr. Anderson agreed to a stipulation of one vehicle per month.

Commissioner Hess commented that it was an embarrassment that the dust control issue was brought up this late in the process. He commented that if the City was concerned about dust control they should put more effort into problems such as off-road vehicles.

Mr. Howard Myers clarified that the greatest issue was because the location was deep into the possible future Preserve area and was not compatible with the surroundings as they currently exist. He noted that other carriers have not presented arguments about entering Preserve areas because alternate sites are

available. He noted that the dust control issue came to the forefront because of the recent regulations.

Commissioner Schwartz opined that the installation would create little or no impact and that the Applicant has demonstrated why other sites would not be viable.

COMMISSIONER SCHWARTZ MOVED TO APPROVE CASE 3-UP-2008 BECAUSE IT MEETS THE SPECIAL USE PERMIT REQUIREMENTS, WITH THE STIPULATION THAT THE APPLICANT ONLY HAVE ONE VEHICLE PER MONTH ACCESS TO THE SITE AND THAT VISITS BE REGISTERED WITH THE CITY PRIOR TO GOING TO THE SITE IN ORDER TO TRACK COMPLIANCE WITH THE STIPULATION;

Ms. Scott noted that the installation process would require repeated visits. Commissioner Schwartz clarified that his intent was for operational maintenance; installation and special circumstances would be exceptions. Any additional concerns could be worked out with the legal department.

ADDITIONAL VEHICULAR RESTRICTIONS ARE TO BE WORKED OUT WITH LEGAL STAFF. COMMISSIONER O'NEILL SECONDED THE MOTION.

Vice-Chairman Heitel felt that the Commission had demonstrated a strong commitment to the Preserve. He expressed concern about the way the City handled the case and the negotiations for lease on the water tower; if the goal was to prevent installation in the Preserve study area, the City should have acted in good faith and made every effort to expedite negotiations with the water tower.

Commissioner Steinke voiced appreciation for Mr. Myers' comments regarding the location being deep in the Preserve study area.

Commissioner Barnett expressed extreme opposition to the application. He opined that many more appropriate locations were available and alternative processes should have been utilized. He felt that Mr. Anderson had been extremely conflict-oriented throughout the process and was resentful that the Planning Commission, MSPC, and City Council were repeatedly being presented with the same application.

**THE MOTION CARRIED WITH A VOTE OF SIX (6) TO ONE (1).
COMMISSIONER BARNETT DISSENTED.**

(Begin Verbatim Portion)

12. 4-UP-2008 Nectar

Request by owner for a Conditional Use Permit for a bar with live entertainment located at 4252 N. Drinkwater Boulevard on a 20,731.15+/- square-foot site with Downtown/Office Residential Planned Block Development (D/OR-2 PBD) zoning.

13. 7-UP-2008 Nectar

Approved 06-25-2008-cb

Request by owner for a Conditional Use Permit for live entertainment on a 20,731.15+/- square-foot site located at 4252 N. Drinkwater Boulevard with Downtown/Office Residential Planned Block Development (D/OR-2 PBD) zoning.

MR. EPSTEIN: Chairman Steinberg, Planning Commissioners, for the record I'm Hank Epstein, Senior Planner with Planning and Development Services. Before you tonight are two conditional use applications, 4-UP-2008, which is for a bar and 7-UP-2008, which is for live entertainment at the same facility.

The site is located in the northwest corner of East Third Avenue and North Drinkwater Boulevard in a neighborhood shopping center done as part of a larger planned block development approved by the City in 1986 for the former Scottsdale High School site.

This is a close-up of that specific building where the use is proposed with the outdoor seating to the east and southeast. And parking on this site is shared between all the property owners and tenants, based on a 2002 inter-parcel agreement.

The land use plan for the area supports Office Residential Type 2 development. The zoning was approved in November 1986, for Office Residential Type 2, Planned Block Development with Downtown overlay.

This bar map that we generated will help to identify where the facility is located within the shopping center. On the graphic, the Nectar facility is in the southeast corner next to the Pearl Restaurant and Bar. To the northwest of Nectar is e4, which was originally approved as a restaurant in 2000 and converted to a bar in 2004. A little closer to the Nectar is the Jackrabbit Supper Club, which originally was the Blue Agave Restaurant, which was converted in 2006 with a bar and live entertainment. There are other uses on the site in the neighborhood shopping center including a salon, Quizno's, a bridal shop, and collectively all these tenants utilize 100 percent of the parking on the property.

There are approximately 125 shared parking spaces, all of which are used. The e4 had to secure 19 off-street parking spaces and they chose the in-lieu program option with approval to meet their additional parking requirements. The Jackrabbit Supper Club secured 64 leased spaces in six locations to meet their additional parking requirements. And what is before you tonight is a request by the Applicants for the Nectar Lounge to secure their required 99 additional off-street parking spaces on -- excuse me -- off-site parking spaces because there are none available for their use for the additional parking on-site.

If I could switch to the overhead. This floor plan may be a little bit clearer than the one that was previously shown. The 2,745 square feet of leased area would be used for seating for the bar area within the suite A of that building. Outside patio is approximately 950 square feet on the east side of the property as well as along the south side of the property facing the intersection of Third Avenue and North Goldwater.

Okay, back to the slides. The key considerations before you this evening is accommodating a third nighttime drinking establishment on the property. That changes the mix of uses possible on this site from a daytime-oriented shopping center that benefits area residents and neighborhood hotels to one that's predominantly a nighttime use shopping area serving the residents in a different capacity.

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Based on our analysis of the land use as envisioned by the neighborhood shopping center and the review of the criteria for both the bar and the live entertainment activities proposed, it was Staff's recommendation to you recommending denial of the proposed bar and live entertainment uses because of the intensification of nighttime activity in an area that was not originally anticipated for this purpose, nor designed for this intense parking demand. Should the Planning Commission, however, support the Applicant's request, stipulations are included in your packets as Attachment A, which are for the bar and Attachment B for live entertainment, with regard to the Applicant's consideration of both uses on the property. The Applicant has been provided a copy of the Staff's report and proposed stipulation and had no objection to the proposed stipulations.

That concludes staff's comments. The Applicants are present to answer your questions and also to make their presentation.

CHAIRMAN STEINBERG: Question from Commissioner Heitel.

VICE-CHAIRMAN HEITEL: Oh, yeah. Thanks. Just a clarification.

I don't know if you can bring the map of the area back up again, but is this area not -- yeah, there you go. A few years ago the City created its Entertainment District; this falls within that area, or is part of that --

MR. EPSTEIN: No, it does not.

VICE-CHAIRMAN HEITEL: Can you outline sort of where that is?

MR. EPSTEIN: Yes. Chairman Steinberg, Vice-Chair Heitel, the area that is considered generically, not officially but generic, is further northeast of this site. It is north of Stetson between East Indian School and Stetson east of Wells Fargo and the area largely contained off the camera, so to speak.

There are other bars in the area that have occurred over time, but the entertainment area was not, you know, south of Drinkwater.

VICE-CHAIRMAN HEITEL: And these other bars in the general area, they've accommodated their parking in a similar way that this Applicant has by going to different locations that are not right there on-site and securing them in some fashion or whatever that's acceptable to the City or whatever?

MR. EPSTEIN: Chairman Steinberg, Vice-Chair Heitel, I wouldn't know specifically from each of the uses, but they've all had to accommodate parking in some capacity with other arrangements for other property owners including the parking garages in the area, vacant lots, there's also City -- on their screen, east of Wells Fargo and north of Sixth Avenue is a City lot that's for parking purposes. There are other arrangements that have been made by other users in the area with -- how do you say it -- daytime uses that don't use parking, but also with the City's transportation department in the area for in-lieu parking in City facilities, even west of Scottsdale Road, to accommodate for their needs. And the land use question is capacity and availability.

I would note in your staff reports the off street parking or remote parking that the Applicant is proposing is with the property owners at the 7272 East Indian School Road building, which is approximately 600 feet southwest from the site, and they would propose valet parking -- complimentary valet parking to that location for their clients, because there is no more immediate parking in the area. There is no available parking immediately south of the site, for example in the parking structure at Lincoln Center. So that's the closest they were able to arrange and propose to the City. And it's not been -- obviously through this process it has to be approved; but that's what they have suggested at this point in time.

VICE-CHAIRMAN HEITEL: Okay. And then just one follow-up to that.

The area and the property is zoned Downtown Office Residential Planned Block, which anticipates a multiple number of uses including what the Applicant is proposing. I understand the live entertainment portion requires the use permit. So is it Staff's suggestion in recommending denial that the use permit criteria is not fulfilled because they have the live entertainment? Because clearly the zoning allows for their proposed use.

MR. EPSTEIN: Chairman Steinberg, Vice-Chair Heitel, the original PBD zoning anticipated a wide range of land uses for the entire area. They anticipated shared parking arrangements would be accommodated amongst larger land owners at that time. That did not materialize in the subsequent development of these various sites that made up the PBD, and the parking that was designed for this neighborhood shopping center was scaled for a different range of uses, mainly daytime retail and commercial uses to serve the area offices and residences, not -- and two -- there were actually two planned restaurants for the site.

They did not plan on the evolution of the project to be a more intense land use. It has evolved that way, but that's not originally what was planned. All we're advising is that that's still a sticking point, so to speak, based on the land use plan; because this site can't contain the parking needs of the change of uses for the site and that parking demand has to be elsewhere. At what point is the saturation point for the land use intensity where it's not something that can be accommodated or should be accommodated by valet parking or by somebody having to walk great distances to get use of the site? And it's also changing the types of land uses from a daytime use, which was what was originally intended, to predominantly evening use.

VICE-CHAIRMAN HEITEL: Got ya, okay. Thank you very much.

CHAIRMAN STEINBERG: Any other comments?

COMMISSIONER SCHWARTZ: Yeah. What I don't understand --

MS. GALAV: Chairman -- could I just clarify one thing, Chairman Steinberg and Commissioner Heitel?

The bar requires a use permit as well. So the bar is use permit as well as the live entertainment.

CHAIRMAN STEINBERG: Yes.

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MS. GALAV: So both of the uses are not permitted by right but require the use permit.

CHAIRMAN STEINBERG: Correct.

COMMISSIONER SCHWARTZ: All right. So then my question is -- thank you for clarifying that because that was one of my questions.

So under right for this particular space what could the Applicant do, under their rights?

MR. EPSTEIN: They are allowed a wide range of retail uses, service uses; excuse me, Chairman Steinberg --

COMMISSIONER SCHWARTZ: The highest and best -- let me interrupt you for a second.

The highest intense use that they could use under the current zoning would require how much parking?

MR. EPSTEIN: Chairman Steinberg, Commissioner Schwartz, we have not analyzed the site to look at the most intense land use --

COMMISSIONER SCHWARTZ: Okay.

MR. EPSTEIN: -- that they could use. There is more than 20 or more uses that are possible under the current zoning that they can seek use of based on the use by right.

COMMISSIONER SCHWARTZ: Okay. So let's make an -- let's just make an assumption right now.

There's no parking on the site for them right now regardless of what they do, correct?

MR. EPSTEIN: If it's a daytime use they probably have -- again, Chairman Steinberg --

COMMISSIONER SCHWARTZ: They would be short, right?

MR. EPSTEIN: They have -- it's daytime versus nighttime use. Daytime we would have to look at the scenario that there are three uses that are parking-intensive uses that demand 100 percent of the off -- on -- off -- the on-site parking. So with e4 closed during the day, with Jackrabbit Supper Club closed during the day, and the Pearl closed most of the day, there is sufficient parking on site for a wide range of retail and services available to the user of that rental space.

When you convert that to nighttime activities, they consume 100 percent of the -- all of them, that's Quizno's, Jackrabbit Supper Club, e4, and the Pearl collectively, and the salons depending on how they are used --

COMMISSIONER SCHWARTZ: So what you're saying is, is that we should control the activity on the site for this space for only daytime; so we should regulate the time because that's the only time that now parking space is available for this use?

MR. EPSTEIN: No. Chairman Steinberg, Commissioner Schwartz, this is a discretionary conditional use action for consideration. If the Planning Commission is in support -- is supportive of the Applicant's request to change the allowed land use for the site to a more intense parking, one of three options is available for them to meet their parking, which also is discretionary on the part of the City; it's not automatic.

They have three options: One is meeting the parking demand on-site, which they cannot do, or they can do in-lieu parking, or they can seek remote parking. They have proposed to meet that parking need by securing a lease agreement with the owners of the 7272 Indian School Building for up to 150 parking spaces. So, that is what they are proposing by these conditional use applications is, "We cannot meet that parking demand on site, so what we are offering to the City is a lease agreement that we would be a party to, that would supply all the 99 parking spaces," that are extra parking that they'd need for those two conditional uses being met off-site. It's the first time that we've considered that many parking spaces in an -- with the solution of a remote parking agreement for 100 percent of their parking need.

COMMISSIONER SCHWARTZ: Okay. But back to my question.

I'm trying to understand that, no matter what particular use goes there, if it has any nighttime activities, then it's going to have to get remote parking. And -- let me just finish for a second, okay.

And I don't think that it is fair for the City to preclude a particular use because it's having more of one time of the day versus the other time of day as long as they provide the off-site parking that's going to accommodate the requirement. I mean we can't -- I don't think it's fair of me to be able to make a recommendation based upon trying to control a use because there are other uses in the marketplace that are of the same like kind; they are not doing anything different, or anything better, or anything worse.

So if they are accommodating the parking, then -- and it meets our requirements, I still don't understand why you've asked for a denial, because it meets the requirements of the Code; the special use permit requirement of the parking. Whether it's accommodated by a partial on-site or no on-site, they have more than adequate parking spaces somewhere to accommodate this site. So that's what I'm having a hard time understanding. So --

CHAIRMAN STEINBERG: Within a certain distance from the facility as stipulated by Code.

MS. GALAV: First of all, Chairman Steinberg and Commissioner Schwartz, the use permit requirement for bars, cocktail lounges, and/or after-hours establishments is "The use shall not disrupt existing balance of daytime and nighttime uses." It is a criteria and it is something that staff can look at when it's evaluating the appropriateness, certainly, of this particular use request.

The other item that I think needs to be clarified here is, that in this instance, the Applicant is requesting all of their parking requirement to be leased. First of all, they have to request it and it's administrative as to whether it can be granted or not; so that is determined by the City Manager whether we --

CHAIRMAN STEINBERG: Could you --

MS. GALAV: -- can lease it. But 100 percent of the uses -- I just want to clarify that.

COMMISSIONER SCHWARTZ: I appreciate that. Could you read again that first statement you made?

MS. GALAV: "The use shall not disrupt existing balance of daytime and nighttime uses." And that's on --

COMMISSIONER SCHWARTZ: Okay, but --

MS. GALAV: -- page seven of your staff report.

COMMISSIONER SCHWARTZ: Right. No, and I understand what you're saying --

MS. GALAV: So we can look at that criteria.

COMMISSIONER SCHWARTZ: Right, but whether -- the question is, how do you define disruption? And I don't believe -- I don't believe that having another bar in this location that's going to meet the needs of the consumer is disrupting the area. I think that there's other uses in the area. I think this is a parking issue, and how do we regulate parking?

COMMISSIONER STEINBERG: Is it a balance issue, daytime and nighttime uses; is that what you're trying to say?

MS. GALAV: Well, Chairman Steinberg and Commissioner Schwartz, what we would look at in our staff analysis and what we did was "What's the underlying zoning district?"

And so you look at the intent of the underlying zoning district first of all. And what was the intent? The intent is to have a mixture of uses, daytime and nighttime; that's the intent of that district.

And so what has happened over time now is that we're getting an imbalance; we're getting more nighttime uses as opposed to daytime uses. And the center really -- and so then we jump into okay, the next analysis point we're going to look at is the parking.

So we don't have adequate parking and they do have to request the parking to be considered to be off-site parking. And in this case because there aren't enough parking spaces to go around, they have to ask for all of them off-site. And so that's the basis of the analysis.

CHAIRMAN STEINBERG: Okay. Could we hear the Applicant now? Oh, Commissioner Hess?

COMMISSIONER HESS: I just have a question. Is the objection to the fact that 100 percent of the parking is remote, for lack of a better word, or the distance it is from the establishment? Is question one.

And question two is -- or maybe it's a comment. It seems to me that in making these judgments -- I understand what we have on the books -- we're not really allowing market

forces to take place because that's an allowable use for this space. To say that there are too many nighttime uses or just not enough daytime uses; I think the market is going to tell the community whether there are too many daytime or nighttime uses, because the establishment will either be successful or it will fail. If it fails then perhaps a nighttime use is inappropriate and maybe the management is inappropriate.

It seems to me that making that judgment simply based on the fact that this is what we think should be in the area, I mean, daytime uses failed there. And that's more of a comment and maybe this is an inappropriate time for that comment; but I am also a little bit confused as to why other establishments can have remote parking, perhaps not 100 percent. Is it the distance it is from the establishment; is that a problem? I'd just like an answer to that.

CHAIRMAN STEINBERG: Okay. Are we ready for the applicant? One more comment. Commissioner Barnett?

COMMISSIONER BARNETT: I guess it's more of a comment for Staff. I guess I'm completely missing the parking issue here because it seems like you're parking -- you're using available parking slots at night on the adjacent piece of property here. So to me, the Applicant is allowed valet parking to go right next door to the next site over, which seems to be a really easy solution to this problem.

Where some of the other sites in this Downtown area we have in-lieu parking, which we don't even know where it is sometimes, and you end up having a random parking spot that might be -- may be near or may not be all that near to the use.

So to me this seems like a total non-starter argument for this particular site. This parking doesn't seem to be an issue. And in other areas in this entire Downtown area we are, and if they don't like walking maybe they'll start using the Scottsdale Tram, or the Trolley, that we have running around.

So I'll be interested to hear from the Applicant what other uses they are thinking about or what their solution is here. But to me it seems like an off-site parking is not really all that big of a deal here.

CHAIRMAN STEINBERG: And there had to be a baseline when they first submitted for this shopping center to begin with, with specific uses etched out with parking ratios at four-per-thousand or whatever they use. So there was some rationale behind the development and approval of this to begin with.

MR. EPSTEIN: If I might interject, Chairman Steinberg, the parking analyses that were done were predicated -- and I'll try to be brief.

The parking analyses that were originally done anticipated a greater amount of shared parking commitment by the major property owners as development occurred within the various parcels. That did not materialize over time and as a result the options became more limited as to where parking availability could occur.

And in this neighborhood shopping center in particular, because it was done as a PBD and it was a shared -- a master shared parking arrangement, there were reductions to the parking overall that had occurred predicated on shared parking occurring. So as

uses evolved over time, there were less and less options available because parking commitments were made to hotels for example, to the Third Avenue Lofts, and other uses, commercial uses, and not necessarily all that can be shared.

And then, also, this was in a small neighborhood shopping center, which envisioned a limited range of uses. And as the Planning Director has indicated, was intended to be a mix of land uses. That's evolved away from that mix and that's all that -- that is the primary issue is the land use. The parking options are out there as options and that's only part of it, it's the land use question that you had raised earlier that's the legitimate question.

CHAIRMAN STEINBERG: Okay. And we have two other quick comments; Commissioner Heitel and then Commissioner Schwartz.

VICE-CHAIRMAN HEITEL: Yeah, just a comment and then kind of a question on this market force thing a little bit.

It seems -- maybe, correct me if I'm wrong -- but daytime uses provide parking spaces for nighttime uses and nighttime uses provide parking for daytime uses and there's kind of this balance that I know is very difficult, you know, it's almost esoteric in a way.

But it seems to a certain degree some of the nighttime uses would be self-limiting, wouldn't they? When the nighttime uses are -- the available spaces are used up, there would not be any more room for any more nighttime uses and then you kind of achieve some sort of a balance there.

But does the City, or do cities, when they get into this balance issue rather than just saying, "We don't like your use for this property or this property," are there incentives available to the City's magic, you know, wand or whatever to give to daytime uses when the City starts saying, "Well we start seeing more nighttime uses out here, we'd like to encourage daytime uses." Is the City able to encourage in a market way -- in a free market way, incentives to attract daytime uses, rather than sort of doing what I'm sensing Commissioner Schwartz's concern is, the City is sort of regulating a person's property saying, "We only think you ought to sell tomatoes or do nails during the day or something." I mean, does that even exist?

MS. SCOTT: Chair Steinberg, Commissioner Heitel, if you're asking whether the City through its Economic Vitality Department could try to attempt to secure businesses that it thought might be helpful to the City, yes, absolutely. The Economic Vitality Department looks at those types of things.

I think that's very far removed from the question in front of you tonight, which is really whether or not these two conditional use permits in front of you -- the request for the bar use permit and the request for the live entertainment permit -- whether those meet the Conditional Use Permit criteria set out in the Zoning Ordinance.

That is the reason why Hank mentioned in his presentation the balance of daytime and nighttime uses, because that's specifically a criteria that must be looked at when you're looking at a bar use permit. This board may review the facts and determine that it does not feel like there's any concern for the balancing of the daytime or nighttime uses and pass on a favorable recommendation. But that is a criteria that the Staff has to evaluate

because it's in our Ordinance. And it's a criteria that the Planning Commission needs to evaluate; it may evaluate it very differently than Staff has recommended, but it is a criteria that needs to be evaluated.

VICE-CHAIRMAN HEITEL: Yeah. And I appreciate that, and thanks.

And that's kind of the dilemma that I'm sort of, you know, wondering about. There's empirical criteria and there's subjective criteria. And so the inherent problem with use permits is there's an empirical criteria that specifically says you have to meet these criteria, A, B, C, D, and E. And most of those criteria that they have to meet are subjective. You know, are they black, white, gray, purple, green, yellow? You know. And so that's the dilemma that I think certainly you understand and, you know, maybe we perceive different than yours. I appreciate what the --

MS. SCOTT: Commissioner Steinberg and Vice-Chair Heitel, I think that's the beauty of you as the decision maker is staff makes the recommendation and you get the discretion to determine based on your review after the hearing whether you think the criteria have been met or whether you think they have not been met.

VICE-CHAIRMAN HEITEL: And on that I will end. You know, I've been waiting for six years for the City Attorney's office to say "The beauty of me making a decision." My life is complete and thank you very much.

COMMISSIONER HESS: Now you're on your way out.

MS. SCOTT: I'm glad I could offer you that.

CHAIRMAN STEINBERG: Commissioner Schwartz?

COMMISSIONER SCHWARTZ: You know, I've been fortunate to be able to travel to many great cities, not just here but abroad, and the lifeblood of all the cores of those cities are the intensification of the nightlife that's created in areas.

The beauty of our Downtown, Scottsdale, is the entertainment that we have created and the nightlife, the buzz, the young people that want to be here, the old people that want to be here; they want to come eat, they want to come to the nightclubs, they want to do all their things. And in all those places, including our own, they have major parking problems.

I'm going to use one of the closest cores we have to us, which is San Diego. And you go to the Gas Lamp District and you know what, it is the most frustrating place in the world to find a parking place; but once I find a place for my car I thoroughly enjoy all the great things that that area provides for us.

If there's a problem here it's not a problem that the potential users have created, it's a problem the City has created by not providing other parking alternatives so that these areas can continue to flourish and have parking spaces for all the people to come and park their cars.

So I would say rather than putting the burden on this property, we put the burden back on ourselves. There's other things we need to do to reinvest in our Downtown to ensure

its continued viability. And I've talked about this on DR Board about design, connectivity of our projects, about getting more foot traffic and how we get more foot traffic in those areas. And this is a perfect example of we need to provide more parking; we've had a parking issue here for a long time. It's okay to have a parking problem; we just need to find a solution.

And the solution is not saying "no" to these good types of uses, it's helping them succeed and helping ourselves succeed. And with that I'm sure the Applicant has something he wants to say.

CHAIRMAN STEINBERG: Oh, we forgot all about the Applicant. We're ready for you.

MR. SEVILLA: Good evening. My name is Apolo Sevilla, 2728 East Pearson Street in Phoenix.

I want to thank you all for listening and I also want to thank Staff for all their work and guidance through the process. It's been a difficult process, it's been a challenging process, but here we are today. With that I just want to jump right into the issues that are in front of us today and try to address them as well as I can.

With regard to the parking situation. We knew that we had two options whether it was an in-lieu or remote parking. We were lucky enough to find physical parking spaces, more than what was required by the City; we have up to 150 parking spaces. My understanding is that the requirement is only 99. We have the option to get more parking if needed, and not only to satisfy the requirements, but to address the need for all of our clients.

We've gone the extra mile and we have actually intended to provide for a complimentary valet service, which there is no other place, at least in the Downtown area, that I know of that provides that service. I know it's costly, but it's something that we're willing to do to address the needs for our patrons.

With regards to the land use issue, I know -- I don't recall if I heard this or whether it was -- or heard it in some of the emails or email communication that I have had with the City. But I believe -- and, again, I am not sure of this number -- but I believe the daytime use versus the nighttime use is only 50 percent. So to me that seems balanced, 50 percent nighttime versus 50 percent daytime.

We have been heavily involved with the community, all of our neighbors. We have been in constant communication with everybody; we have several letters of support from business owners, everybody in the plaza, the residential space right across the street from the site, San Marin. To this date so far, that I know of, there's no opposition whatsoever and if there was any, or if there is any, we would be more than happy to address any questions and talk to anyone about the issues and see how we can work together and solve this.

We are very excited to come in here. We believe we have a great concept. We believe it's something that's very well needed. Our intentions are only to do something with dignity, something very high-end, something that would go and it would tie with the Scottsdale - Old Town area and clientele that though the years have become to be that great place that everybody wants to come to.

We have the experience. We believe we have a great concept. And I would just like to ask for everyone here tonight to look at the issues and ask yourself whether or not we have a solution to those issues. Parking, I believe that we can resolve that. And the daytime use, we could potentially resolve that as well given the balance, again, is that 50 percent and 50 percent.

We have not made a decision just quite yet. Nonetheless, my brother and I have -- which is my business partner -- have talked about having the opportunity to have a daytime use to address the concern, Staff's concern, about the use during the day. Perhaps something that would tie hand in hand with our high-end lounge. Perhaps, you know, an art gallery. We know several international and local artists that are very interested in working with us in creating that concept.

So we're just here today to ask for an opportunity. We're very excited and I think if we were to have that opportunity we would do something extremely well and something with dignity that everybody would be proud of.

So with that, you know, I just -- if anybody has any questions or any concerns I'll be more than happy to go over anything.

CHAIRMAN STEINBERG: Commissioners? No?

COMMISSIONER SCHWARTZ: I'll make a motion.

CHAIRMAN STEINBERG: Pretty good. We have three speakers so you might want to come back and respond.

MR. SEVILLA: Thank you.

CHAIRMAN STEINBERG: Our first speaker is Tom Harris.

MR. HARRIS: Councilmembers (sic), my name is Tom Harris. I'm the general manager of the Hyatt Place, which is right across the street from the proposed site.

I've been there for about a year and a-half and we're besieged with constant concerns about noise complaints; and they're not coming from that establishment there, but they're coming from the two other establishments. And our concern is that by having another establishment that might have live entertainment that's going to cause more concerns.

We -- when you go to a hotel and you stay at a hotel and you have a concern that's out of the hotel's control, a hotel company such as Hyatt, wants to make every guest satisfied. We can't tell our guests, "Well, we have no control over the noise from the guests that are coming out of the lounges waiting for the valet parking." We end up refunding their money and it becomes a costly, costly issue.

Our concern is not the parking. Our concern is the people waiting for the parking coming out of the clubs with the noise levels. You've got clubs that have people that are there -- you know, they close at two o'clock, they might be hanging around the parking lot until about three o'clock and, unfortunately, they're disrupting our guests.

When any of you-all travel, or anybody here in the room, you expect to travel to a hotel to get a good night's sleep; and that's what you pay for. And unfortunately, on Friday and Saturday nights specifically, our guests are not getting it. And I could present documentation of refunds that were given to our guests; and it's becoming very costly for us to do that.

We want to see high quality, high end, energy level establishments here because it helps us when we're bringing guests into our hotel. But when we have groups -- We received an email from a group that was with us on March 13th and it's a perception issue. And these were 24 people and just one of the excerpts from it was just basically:

"The constant flow of taxis obviously helps keep the drunken drivers off the street, which is a good thing. The hookers up on the sidewalk talking to the patrons as they leave, not a good thing. The decibel noise level, enough to chase away any repeat business, the worst thing that can happen to a reputable hotel. The Hyatt Place weekly business is no doubt being driven out by the three-night party being spilling out of the property next door. Although mounted horse patrols milled around a lot, there was no effort to contain the crowd inside the building."

Now, again, we know that we don't have the hookers that they said on here, but, again, it's perception. And whether, you know, you mentioned -- Commissioner Schwartz, you mentioned going to the Gas Lamp District out in San Diego I believe. It's nice to go to those establishments, but if you were there and you were tired and you wanted to get a good night's sleep and the noise levels outside were taking precedence over your ability to enjoy your stay -- you're not going to the bars because they're already closed, you're coming to the hotel. And we're experiencing that right now.

So we just, you know, want to voice some concern about that. If there's a way around it, obviously we're looking to try to do something. But I don't see a way around it with what we've been experiencing so far.

CHAIRMAN STEINBERG: And your windows are insulated in the hotel?

MR. HARRIS: Our windows are insulated and it's gotten to the point now that the complaints are so predominant that we are looking at possibly replacing those windows; at a \$3,000 cost we're looking at over \$300,000. That's an expense I don't think we should have to bear.

CHAIRMAN STEINBERG: And this is the noise emanating from all of the nighttime activity, not just the Applicant but the other -- the Jackrabbit and whatever else is there?

MR. HARRIS: Correct. You've got Jackrabbit's and you've got e4 that are right next to each other.

CHAIRMAN STEINBERG: Right.

MR. HARRIS: And both of them pile out at the same time.

CHAIRMAN STEINBERG: I see.

MR. HARRIS: Again, you know, I can't say enough that we want to be -- we want to be good neighbors and we will be; we'll continue to do that. We provide a quality product for the Old Town Scottsdale area. We just need to find a resolution to this noise concern.

CHAIRMAN STEINBERG: Okay. Appreciate your comments.

(Inaudible Commissioner question)

We're talking about the hotel which is right in the middle, behind Quizno's.

Thank you very much. We have a question for you. Commissioner O'Neill?

COMMISSIONER O'NEILL: Have you contacted the Applicant before today?

MR. HARRIS: The Applicant before today? No, I have not.

COMMISSIONER O'NEILL: All right. Thanks.

CHAIRMAN STEINBERG: How about the existing uses; have you spoken to them about trying to mitigate this through some architectural barriers or another means for valet pickup or --

MR. HARRIS: Could you say that again? I'm sorry.

CHAIRMAN STEINBERG: Have you communicated with the existing uses, Jackrabbit and e4?

MR. HARRIS: Yes, we have.

CHAIRMAN STEINBERG: And there's nothing you can do to mitigate this through architectural elements?

MR. HARRIS: We, we -- we seem to have trouble connecting with each other.

CHAIRMAN STEINBERG: I see. No Kumbaya? Okay. Thank you so much.

MR. HARRIS: Thank you.

CHAIRMAN STEINBERG: Our next speaker is Douglas Hershel and then we have -- Jerry, you going to speak? Oh, of course.

MR. HERSHEL: Chair Steinberg, Commissioners, Douglas Hershel, 4252 North Drinkwater Boulevard; Pearl Sushi. I'm the owner, in spite of my appearance. I apologize for that today.

As a business owner, not only here but also in Tempe, I'd like to put my recommendation that these folks are allowed to open up their business. The only thing I've heard here today so far in negative, you know, in negative approach towards this opportunity is parking and also with our friend at the Hyatt with the noise issue.

I think that personally being the owner of Pearl, we were open until 4 a.m. until recently, until literally, a week ago, to accommodate trying to capture these people coming out of Jackrabbit, coming out of e4, coming out of the entertainment district as it was described up off of Stetson, i.e. Martini Ranch, Six, all these different establishments. So -- by pulling those people in. But we have thus rendered, this is a business decision, we now close at two o'clock, okay.

I've met Apolo and I've met Marte and have known them now for probably two or three months. I've seen their concept. I've seen their design. We've actually -- my partner Jimmy Carlin and the business, has also worked with them on design for this project.

And as a business owner in this particular area, I think their business would actually offer up a great deal more opportunity for this area, for this corner, for the housing that's across the street, for the clients at the Hyatt, for the clients across the street to the different hotels, as opportunity to be into a high-end establishment. We're not catering to the 19, 20, 21, 22-year-olds, we're catering to the 30, 40-year-old folks that are coming in that want to have a very high-end opportunity to have a lounge situation, not a kid bar where, you know, it's ridiculous.

The entertainment would be thus of jazz and a heavy mic night, those types of situations in addition to what we're doing at Pearl, which is a very close tie, very close opportunity for us to work together to build this corner back into a destination, not just a pass-through situation.

So I guess, basically, generally speaking I would hope that you're being very supportive and approve their opportunity here.

CHAIRMAN STEINBERG: Thank you very much.

One more speaker, Jerry or Apolo, would you like to respond to any of the comments?

MR. SEVILLA: Thank you. I just want to make reference to the fact that I did -- we made several attempts to contact management at the Hyatt. Being good neighbors, we've met with absolutely everybody else. I do not remember the name of -- nor do I have it here with me -- but your nighttime manager. I talked to him on several occasions and also we're -- you know, I would like to reiterate the fact that we're open to discuss anything that we can to be able to keep you happy.

I also want to make the point that we will heavily enforce, and it's part of our security plan -- operations and security plan that the police department has already approved, the fact that we will have a lot of security. And, again, this is not going to be just a destination to have another drink, but instead is going to be very high-end. And perhaps the clientele will be different than the clientele that's already attending the other establishments that you have a concern for.

Our site is also -- it's in the same development, but nonetheless, it's a lot farther distance from the hotel itself. We still make ourselves available to discuss and brainstorm and bounce ideas and see if we can come up with a solution and something that you could live with.

Other than the opposition that we heard today, I have not heard of any other opposition, but the other way around; letters of support. I don't know if you had the opportunity to review, but there are several letters of support from business owners and signatures of support from the community as well that we have collected.

So with that, I don't know if there's any other concerns or questions that anyone may have?

CHAIRMAN STEINBERG: Just the hookers, that's all we're concerned about. Just keep the hookers off the streets, okay.

MR. SEVILLA: We will do. Not a problem.

CHAIRMAN STEINBERG: Okay, sir. We have some Commissioners that probably want to respond. Commissioner O'Neill? We have a question for you.

VICE-CHAIRMAN HEITEL: Is there a site plan of your project and just maybe you can find that? Yeah, there. Where's your entrance and parking queuing area and all that sort of stuff?

MR. SEVILLA: I will look for the floor plan; I do have a floor plan.

VICE-CHAIRMAN HEITEL: Maybe -- yeah, Staff's got one for you.

MR. SEVILLA: Thank you.

VICE-CHAIRMAN HEITEL: That entry area, your front doors and stuff, where do they face, on which street?

MR. SEVILLA: The entryway or the front -- the entryway is right across the street from the entrance of the hotel. Is that clear?

VICE-CHAIRMAN HEITEL: No. Which direction is it facing, do you have a street?

COMMISSIONER BARNETT: Mr. Heitel, there's no patios along the road.

CHAIRMAN STEINBERG: Northwest is the entry.

VICE-CHAIRMAN HEITEL: Northwest, okay.

MR. EPSTEIN: (Microphone not on - Inaudible)

VICE-CHAIRMAN HEITEL: Great. Thanks, okay.

CHAIRMAN STEINBERG: Commissioner O'Neill?

COMMISSIONER O'NEILL: The things that are going through my mind and have gone through my mind when considering the case specific to the use permit criteria are one, disturbing the balance and two, the parking. And, again, one of these, maybe both of these, are very subjective.

But disturbing the balance is completely subjective. My subjective opinion is it doesn't disturb the balance whatsoever. Parking is not subjective. To me they've either met the parking or didn't meet the parking, and they met the parking. So I don't quite understand that one because they have an opportunity with one of the neighbors to actually not only meet but exceed, dramatically exceed, the parking requirement. If those were the only two issues with regard to meeting the use permit criteria it surprises me we've been talking about it for so long.

In addition to that just thinking about more future planning and forward planning for the City, I mean, at least in my opinion I want to see, you know, more of an urban, downtown environment for Downtown Scottsdale moving forward. Parking is going to do nothing but become more of an issue than it is already.

I agree with Commissioner Schwartz that we need to be proactively looking for parking solutions. And it's not unique to the City of Scottsdale. I mean, there's metropolitan areas throughout the world that are dealing with how to accommodate people that want to come into a downtown area at peak times of the day, and there's ways to solve that. And this Applicant, I believe, absolutely has solved that issue.

The hotel's concerns I think are real and legitimate concerns for that area. I think they are very specific to the two establishments that are right next to your front door. This will have an impact; I don't want to downplay that. It's a little disappointing to me that the Applicant, it appears at least, has reached out to the hotel and this is the first time they've received any negative comment or communication from the hotel.

I like when applications are going through the process, and specifically the process is designed to notify applicants well in advance of this hearing so that applicants and neighbors can get together and discuss things before they come to hearings. And knowing that they've reached out and that the hotel didn't respond is just a little disappointing.

And in regard to the hotel, and this again I think is maybe just opinion, but -- and it's honest, just purely coincidental. On Monday night of this week some friends of mine contacted me who were coming in from out of town specifically to celebrate, they were returning from Africa. They're not from Scottsdale, but they are coming to Scottsdale to celebrate. They wanted to be in Downtown and asked me where to stay. I gave them a recommendation, which is a hip-urban kind of hotel, I won't name it, but it was a little farther than they wanted to walk to go to the establishments that are in the Entertainment District. And I recommended your hotel, coincidentally because they can walk to these kind of establishments.

And even for me another reference, and again purely coincidentally, a week from Friday of this week I'm going to be going to the Gas Lamp District with friends, staying at a hotel, the Keating, and staying specifically there to be around that kind of environment; and would expect if I'm going to a hotel that's in a downtown entertainment area that I'm going to -- I know where I'm going and I know what to expect.

But I understand -- if I understand correctly there's probably a lot of business class clientele that are coming to your hotel and they are not understanding that. So I don't know if there's maybe more proactive ways that in your website, or in your marketing, you can make sure that the clientele that are coming to your hotel understand where it

is. And that you can promote some of the things as opposed to have to be refunding money. You know, try to find a market opportunity to drive more people to the hotel to come stay there to use all of the great things that the City has to offer.

So with that I'll be supporting the case.

COMMISSIONER STEINBERG: Okay. Any other comments? Commissioner Schwartz?

COMMISSIONER SCHWARTZ: Couple of things. I'm going to support your case tonight; I think it's obvious from my comments. But I also want to say that its been my experience over time that sometimes cities like to encourage other things within your business to accommodate what they feel are important things, but are really outside of what is really going to be a successful project.

I use an example of a site plan. Cities all want to have a Kierlandesque-type project, but unfortunately retailers don't like a Kierlandesque-type project in this environment; it only works in certain areas. And so they convince the developer that the only way they're going to get their project approved is to design it a certain way. The developer gets it approved, he goes out and gets some tenants, the project falls on its face and becomes a white elephant; okay. Doesn't help the City and it doesn't help the developer, okay.

So what I say to you is you have a great idea for a nighttime entertainment. Don't try to accommodate for daytime entertainment outside of what your business plan is unless your heart and soul's in it and you know you can make it succeed, because it's up to you to invest in your business and your business plan.

So with that I will recommend for --

CHAIRMAN STEINBERG: We've got more comments.

COMMISSIONER SCHWARTZ: We've got more comments? Okay.

CHAIRMAN STEINBERG: Commissioner Steinke?

COMMISSIONER STEINKE: I want to wrap up about four loose ends that I have here.

One is first of all Commissioner Hess spoke briefly about the fact that the marketplace determines to a great extent whether daytime use or nighttime use is appropriate or best, or the most timely, of uses. And I think we're in an environment today where we need to keep Downtown vibrant with class acts and people who intend to do things right for us. We have a reputation for that and we expect those high standards to be held. But for us to try to use that to dictate daytime/nighttime percentages, that's pretty tough in this environment. And I think the businesses themselves and the owners who represent them will determine how that mix plays out better than seven people sitting up here trying to play the numbers game. So that, I think, speaks well of the fact that we have -- you certainly understand the need to be a class act and hold the standards high. And I applaud the outreach to the hotel and hope that there's some things that you can do to mitigate those issues.

I've asked before on occasions like this that, not only do we refer to the Downtown Plan, but we're in the midst of this wonderful new thing that's blossoming, the Downtown Area Plan that will be coming out soon -- and I've asked before on occasions like this when we're talking about uses and mixes and densities and all those things that we try to get some input from Long Range Planning. I didn't really see anything in here.

But I suspect that whatever the Downtown Plan is now there's going to be plenty of discussion about these kinds of issues that we have on tonight when we get to talking about the Area Plan. I already know we're talking about live, work, play. We're talking about densities and heights and all kinds of things that are intertwined here. I'm not so sure that it's perfectly fair at this stage to just refer to Downtown Plan by what it has been but more by what it's intended to be and where we intend to take it. So we have to be a little careful about how much faith we put into where we're coming from, and more into where we're going.

I bring up one last thing here. Really it wasn't that long ago, a few weeks ago, a few months ago, a few meetings ago we were -- we spent about this same amount of time I think talking about two establishments at the corner of Scottsdale Road and McDowell Road that were just worried that they weren't going to have any places to park, everybody was going to fill the place, it was going to be vibrant and alive and all kinds of things. We had a lot of discussion about activity that was going to take place and it seemed to center around everybody thinking it was going to be success stories.

I think we have to focus on those opportunities where we can here and this seems to be another one of those where parking, you've accommodated that through the hard work and effort you've done ahead of time and to the extent that you'll even address or think about potential -- the potential of daytime use is a credit to your commitment and the fact that you're listening closely to those things that are important to the people here.

I, for one, see this as a good step, good use. You need some mitigation for the hotel and we need some understanding of the dynamics that are going on there, but I'll be supporting it tonight.

CHAIRMAN STEINBERG: Commissioner Heitel, you had a comment?

COMMISSIONER HEITEL: Yeah, just a couple of quick comments. I'm going to support the case and I do applaud the Applicant's certain willingness to really try to consider doing something in the daytime. I think the effort is sincere; I've talked to them prior to this hearing. And I think it would be a great thing if the Applicant did pull that off with some passive sort of art gallery type of thing or something just to show in the future that that sort of multiple use can occur in these downtown areas. So I do applaud that and hope that works out, if it works for you.

I hope the comments from the hotel manager are -- I don't think Staff will take them lightly, but I hope a little red flag kind of goes up on the board where you've got all your red flags. And as we try to accommodate these multiple uses in these Downtown areas -- we do have some pretty strong stipulations that are included with all of these bar and nighttime uses and perhaps -- I don't know this may be the first time you've ever heard of this concern from the hotel owner or not, but it might be beneficial to put some of those hotel users together in a room and sort of use the potential heavy hand that you have with these stipulations with these bars to not necessarily harm them but to bring

them to the table. And if there're things that can be done working with the police, maybe paying a little more attention to that. It seems like it is a potential problem that could bite the City harshly down the road. And these applicants make lots of promises to the City about security plans and no noise outside of their projects -- and obviously you can't control everybody that walks out when they're drunk at two o'clock, but there's probably some things that can be done if people are hanging out there too long and not just getting in their cars. So I would encourage that sort of dialogue to protect those hotel users too.

Thanks.

CHAIRMAN STEINBERG: Okay. Are we ready for a motion?

COMMISSIONER SCHWARTZ: Yes.

COMMISSIONER SCHWARTZ MOVED TO APPROVE CASE 4-UP-2008 BECAUSE IT MEETS THE SPECIAL USE PERMIT REQUIREMENTS AND CASE 7-UP-2008 BECAUSE IT MEETS THE SPECIAL USE PERMIT REQUIREMENTS. SECONDED BY COMMISSIONER BARNETT, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO.

(End Verbatim Portion)

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 7:33 p.m.

Respectfully submitted,
AV-Tronics, Inc